Sanyan Lumber Sdn Bhd v Sanyan Wood Industries Sdn Bhd

HIGH COURT (SIBU) — SUIT NO 22–33 OF 2006
HAMID SULTAN JC
2 JULY 2008

Companies and Corporations — Directors — Agency — Company having two director-shareholders with equal shares — Civil suit commenced by one director on behalf of company without approval and/or consent of the other — No emergency or urgency giving rise to agency of necessity — Whether director commencing action could claim he was an agent of necessity

Companies and Corporations — Directors — Agency — Ostensible authority — Company having two director-shareholders with equal shares — Civil suit commenced by one director on behalf of company without approval and/or consent of the other — No resolution to commence action by board of directors or by general meeting of company — Whether director commencing action had actual or ostensible authority to commence such action

PW1 and DW1 were both shareholders and directors of the plaintiff. Each held 50% of the plaintiff's shares. The defendant — a business initiative of two Japanese companies — operated a plywood factory on the plaintiff's lands. PW1 was also the managing director of the defendant company from its formation till his resignation on 25 July 2003. PW1, without the approval and consent of DW1, filed a claim on the plaintiff's behalf for more than RM1m against the defendants for, inter alia, vacant possession of the land and mesne profits. The defendant argued that its factory came to be on the plaintiff's land as a result of a joint venture agreement ('JVA') with a Malaysian group which offered it land — the plaintiff's lands — for free. The defendant claimed that it was in fact operating its factory on the plaintiff's land for free until PW1 demanded payment of rental some three years after he resigned from the defendant. The defendant further submitted, inter alia, that PW1 had no authority to commence the action on the plaintiff's behalf.

Held, dismissing the plaintiff's action with costs to be borne personally by PW1:

(1) PW1 had no authority to commence the action. He was not a

shareholder who had more than 50% of the shares in the plaintiff. PW1 ought to have obtained the approval of the board of directors. However, in the instant case, there was no resolution of the board of directors or resolution of the general meeting of the plaintiff company to commence the proceedings (see para 10(i)).

(2) PW1 did not also have ostensible authority to commence the action as he did not have the consent of the other shareholder — DW1. Even if PW1 had attempted to obtain such consent, he would not have obtained it in the circumstances due to the special working arrangement between all persons involved in the JVA, including PW1 himself. PW1 could not also plead that he was an agent of necessity since there was no emergency or urgency giving rise to agency of necessity. He had merely initiated the action to demonstrate his frustration (see para 10(ii)).

(3) The High Court would accept the defendant's version and hold its defence successful. There was nothing prohibitory in law for the plaintiff to permit the defendant to operate its business on its (the plaintiff's) lands without payment of rental as was agreed (see para 10(iii)).

[Bahasa Malaysia summary

PW1 dan DW1 kedua-duanya pemegang-pemegang saham dan pengarah-pengarah plaintif. Masing-masing memegang 50% daripada saham plaintif. Defendan — yang memulakan perniagaan dengan dua syarikat Jepun — menjalankan kilang kayu papan atas tanah plaintif. PW1 juga adalah pengarah urusan syarikat defendan dari penubuhannya hingga persaraannya pada 25 Julai 2003. PW3, tanpa kebenaran dan persetujuan DW1, telah memfailkan tuntutan bagi pihak plaintif untuk lebih RM1j terhadap defendan-defendan untuk, antara lain, milikan kosong tanah dan hasil perantaraan. Defendan-defendan berhujah bahawa kilangnya berada atas tanah plaintif hasil perjanjian usahasama ('PUS') dengan kumpulan dari Malaysia yang telah menawarkannya tanah — tanah-tanah plaintif — dengan percuma. Defendan mendakwa bahawa pada hakikatnya ia menjalankan kilangnya atas tanah plaintif dengan percuma sehingga PW1 menuntut bayaran sewa selama tiga tahun selepas dia bersara daripada defendan. Defendan seterusnya berhujah, antara, bahawa PW1 tidak mempunyai kuasa untuk memulakan tindakan tersebut bagi pihak plaintif.

Diputuskan, menolak tindakan plaintif dengan kos yang perlu dibayar oleh PW1 sendiri:

(1) PW1 tiada kuasa untuk memulakan tindakan. Dia bukan pemegang

saham yang mempunyai 50% daripada saham dalam plaintif. PW1 patut memperoleh kebenaran lembaga pengarah. Walau bagaimanapun, dalam kes ini, tiada resolusi lembaga pengarah atau resolusi mesyuarat am syarikat plaintif untuk memulakan prosiding (lihat perenggan 10(i)).

(2) PW1 juga tiada kuasa untuk memulakan tindakan kerana dia tidak mendapat persetujuan pemegang saham lain — DW1. Meskipun PW1 telah cuba mendapatkan persetujuan sedemikian, dia tidak mungkin mendapatkannya dalam keadaan berikut akibat daripada urusan pekerjaan khas antara semua orang yang terlibat dalam PUS itu, termasuklah PW1 sendiri. PW1 juga tidak boleh merayu bahawa dia ejen yang diperlukan memandangkan tiada kecemasan atau memerlukan tindakan segera yang menimbulkan tindakan yang diperlukan. Dia hanya memulakan tindakan itu untuk menunjukkan kekecewaannya (lihat perenggan 10(ii)).

(3) Mahkamah Tinggi akan menerima versi defendan dan memutuskan pembelaannya telah berjaya. Tiada apa-apa larangan di sisi undang-undang untuk plaintif membenarkan defendan menjalankan perniagaannya atas tanahnya (plaintif) tanpa bayaran sewa seperti yang dipersetujui (lihat perenggan 10(iii)).]

Notes

For cases on agency, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 160–166.

Cases referred to

Malaysia Land Investment Co v Sathask Realty Sdn Bhd [2001] 1 MLJ 451 (refd)

Sarawak Building Supplies Sdn Bhd v Director of Forests & Ors [1991] 1 MLJ 211 (refd)

Tang Sing Wung v Genesis Force Sdn Bhd (Sibu Civil Appeal No 12–9 of 2007) (distd)

Legislation referred to

Civil Law Act 1956 s 28(4)(a)

James Lo (Ting Cheng Cheng with him) (George Lo & Partners) for the plaintiff.
Sui Chee (Lim Lip Tze & William Yeo with him) (JM Lim & Co Advocates) for the defendant.

Hamid Sultan JC:

[1] This is my judgment in respect of the plaintiffs' claim for the sum of

more than a million ringgit against the defendants for vacant possession of land and rental inclusive of double rental, interest, costs etc.

PRELIMINARY

[2] The facts of this case is unique in that the plaintiff company consists of two shareholders and directors. Both holding 50:50 percent of the companies' shares. One of the share holders by the name of Dato' Ting Check Soo (PW1) is initiating the action without the approval and consent from the other share holder. Further, the other shareholder says that PW1 has no authority to initiate the proceedings and that the plaintiff had voluntarily allowed the defendant to enter into the plaintiffs' land and operate their business without the need to pay rental, as all parties inclusive of PW1 benefited from a joint venture agreement.

[3] The real issue for determination in this case as I see is, as to whether PW1 can initiate this action without proper approval and consent. Whether as a matter of law, PW1 can establish the issue relating to burden of proof in civil cases, when the other 50% shareholder evidence is in support of the defendants' evidence.

BRIEF FACTS

[4] The defendant's version:

(a) The defendant's company and its business originate from business initiatives of two Japanese companies, namely Noda Wood Company Limited ('Noda Wood') and Ishinomaki Plywood Manufacturing Company Limited ('Ishinomaki'). Noda Wood and Ishinomaki (collectively the 'Japanese Companies') were in the business of importing logs, manufacturing and distributing plywood in Japan.

(b) The Japanese companies were interested in setting up a plywood factory in Sarawak ('the Sarawak Business'). They looked for local parties to be joint venture partners. Among those that the Japanese companies talked to, were the Malaysian group who eventually entered into a joint venture with the Japanese companies.

(c) DW1 (one of the Malaysian groups) gave evidence that the Malaysian group wanted the Japanese group to join, in joint venture with them. They knew that the Japanese group has the technical know-how for plywood production and the access to the Japanese market. To attract the Japanese group, the Malaysian group offered them lands for free for the operation of the factory. As for the Japanese group, it was for them to set up the factory, run the production, control the quality and marketing.

(d) After some negotiation, the Malaysian group brought the Japanese group to the land which the Malaysian group proposed for the plywood factory operation. Dato' Ting Check Sii said that all the lands there can be used for factory operation. It was agreed between the Malaysian group and the Japanese group that there is no charge for use of the lands.

(e) The joint venture agreement was then prepared by the lawyers appointed by the Malaysian group and signed. The factory was then built and factory operation commenced.

(f) Since the defendants started operation, its has used the provided lands without any payment of any sort to any of the registered proprietors whose land it uses for it business or operation. This was the intention of the parties. The parties have proceeded on this basis.

(g) Ting Check Sii was the managing director of both the plaintiff's company and the defendant's company. He was the managing director of the defendant company from its formation till 25 July 2003 when he resigned as managing director.

(h) Thirteen years after the joint venture agreement and some three years after he had resigned as managing director of the defendant, Ting Check Sii then wrote for the first time (by letter dated 5 July 2006) to ask for payment of 'rental' commencing from January 2001. This was the first time that 'rental' was asked for.

[5] The defendants say:

PW1 is evasive in his evidence on this and there are material contradictions in his evidence:

- PW1 first admitted in his examination-in-chief he did not ask for rental before 2006.
- PW1 in examination-in-chief then said that, 'after 2003, factory increase production to five production lines. We asked them for rental, they say 'wait, wait, wait'. This is inconsistent with his evidence that he did not ask for rental before 2006.
- In cross examination, PW1 was asked, when did he ask for rental and when did the defendant say 'wait, wait, wait'. His answer was, 'in end of 2002'. This is inconsistent with his purported explanation that he only asked for rental after 2003 (ie 2004 onwards), after factory increased production.
- In cross-examination, a question was put to PW1, that in fact he did not ask for rental. PW1 contradicted himself again when he changed his evidence to saying he asked many times and 'it was in 2002 that

I asked. End of 2001, also I asked'.

(i) PW1, Ting Check Sii, alleged that in 2002 or 2001 he verbally asked Shiro Noda (a director of the Japanese Group in the defendant company) for payment of rental and the answer was 'wait, wait, wait'. This is not true as shown by the contradiction in PW1's own evidence. It is also directly contradicted by the evidence of DW3, Shiro Noda, which was unshaken. Moreover, what Ting Check Sii alleged in the witness box contradicts the plaintiff's own pleadings.

In the statement in reply, it is pleaded that, 'After 2003 when the defendant's production increased... the plaintiff through Dato' Ting had asked for rental to be paid by the defendant but the requests were ignored by the defendant'.

(j) The Japanese were taken aback by the demand. DW2 gave evidence that he was surprised to receive the demand letter from Ting Check Sii. DW2 then raised the matter with the directors of the defendant that the plaintiff should not be asking for 'rental' because of the understanding from the start that the Malaysian group would provide land for use without charge.

(k) DW1 (a 50% shareholder and one of the two directors of the plaintiff) did not agree for the plaintiff to demand for payment of 'rental'. When Messrs George Lo wrote (purportedly on the instruction of Ting Check Sii and on behalf of the plaintiff), DW1 wrote challenging any such authority and saying that Messrs George Lo was not authorised or appointed to act for the plaintiff and that it was always understood that there was never to be any rental for the use of the lands.

(l) Notwithstanding the objection as to authority by DW1 on 17 August 2006, the present action was commenced on 22 September 2006. It was commenced without authority. DW1 gave evidence there was no resolution and he was not consulted. He further testified that he did not agree to the case being started as it was wrong to collect rental now. This was because, to attract the Japanese to joint venture with the Malaysian group, the Malaysian group had offered the Japanese group the use of land for free. The parties had proceeded on this basis.

[6] The defendants say the plaintiffs' action must be dismissed on the following grounds namely:

(a) There is no authority for the present action to be commenced in the name of the plaintiffs. PW1 has no authority to instruct Messrs George Lo & Partners to act for the plaintiffs and commence the present action.

(b) The plaintiffs have failed to prove any agreement for 'rental' or any monies to be paid for use of the lands;

(c) The defendants have proven that the Japanese group was induced or enticed into a joint venture by the promise or offer of land to be used by the joint venture without charge, that the lands have been provided and used without charge for the joint venture's plywood production operations which had expanded over the years and that the plaintiffs are now estopped from claiming otherwise.

(d) The claim for mesne profits is simply misconceived. Mesne profits refers to what is payable by a tenant who wrongfully continues in after termination of tenancy. Here, the plaintiffs are not claiming that the defendants were a tenant. Thus the claim for mesne profits under s 28(4)(a) of the Civil Law Act 1956 is not sustainable.

THE PLAINTIFFS' ARGUMENT

[7] (a) The plaintiff says: (i) there is no agreement between the plaintiff and the defendant that the plaintiffs' lands are given up forever; (ii) in such absence, it is beyond doubt that the defendant ought to pay the plaintiffs for the lands; (iii) there is no such thing as 'a free lunch'; (iv) if you occupy another's land, upon demand, you should pay rental and/or return vacant possession. Equity requires nothing less.

(b) The only exception would be if there was an agreement to the contrary. That is the essence of the defence witnesses' testimony in court, that the plaintiffs agreed to 'provide' the defendants its lands for free, and for so long as the joint venture business needs.

(c) But there is no such agreement. The defendants point to a joint venture agreement (JVA) between Goodmatch Sdn Bhd (the Malaysian contingent) and Noda Wood. lshinomaki Plywood (the Japanese contingent). It defies comprehension how an agreement between Malaysian and Japanese partners can become an agreement between Sanyan Lumber (the plaintiff) and Sanyan Wood Industries (the defendant). All four are separate legal entities and there is no pleaded defence to lift the corporate veil. In fact, the defendants are bending over backwards to not lift the corporate veil. In the issue which we will touch on below, the plaintiffs allege that Morshidi (DW1) is a nominee of Tufail Mahmud. DW1 vehemently denies it.

[8] The plaintiffs rely greatly on my judgment in *Tang Sing Wung v Genesis Force Sdn Bhd* (Sibu Civil Appeal No 12–9 of 2007) where it was stated:

(i) The appellant in the entire submission placed great emphasis on the oral agreement. However, as a matter of fact the learned sessions judge had not totally accepted the appellant's version. In my view,

courts should give very little weight to allegation of oral agreement in this time and era and more so when they are dealing with corporate entities (see *Dato Ting Check Sii v Datuk Haji Mohamad Tufail bin Mahmud & Ors* [2007] 5 MLJ 339; [2007] 7 MLJ 727).

(ii) The early part of the common law jurisprudence on contract developed on the basis that people resorted almost in all cases to oral evidence. As literacy level grew, written agreements became more popular. This resulted in the introduction of evidential rules which did not as a general rule allow written documents to be displaced by oral agreements. Almost all of these rules as to evidence have been encapsulated in our Evidence Act 1950. In this case, the appellant alleges oral agreement subsequent to the written agreement but has not put the terms of the agreement in writing contemporaneously and sent it to the respondent, which is a corporate entity. Further, there is no good reason given as to why the oral agreement of such an important matter was not put in writing. Courts generally will not accept sympathy evoking stories of oral agreement at this time and era, when not only has literacy level increased but also the awareness of legal right, and need for documentation, such as written agreements, delivery order invoices etc. In this case, the appellant has entered into a written agreement, has also issued invoices, but has not reduced the oral aspect into writing. On such facts, court will not ordinarily lend credence to the appellant's version as such precedent will promote unhealthy litigation and it is not in the public interest to do so, taking into consideration that such oral agreements can almost in all circumstances be contemporaneously reduced in writing. On this subject, I will go to the extent of saying that court should invoke adverse presumption against parties who attempt to introduce oral agreement in civil cases where there is ample opportunity contemporaneously to reduce it in writing.

[9] At the outset, I must say that the facts in *Tang Sing*'s case and the peculiar facts of this case are different. Quoting cases out of context does not assist in the administration of justice. Further, it is undesirable for corporate personalities to come before the court and give evidence to conceal the truth or working arrangement between the plaintiffs and the defendants. In this case, it would have been proper if the plaintiffs had pleaded the truth and the arrangement with the defendants but allege in any event according to law, they are entitled to vacant possession and/or rental.

[10] I have heard the evidence, the documents and submission of the parties in detail. I take the view that the plaintiffs' action must be dismissed. My reasons are as follows:

(i) It is my finding that PW1 has no authority to commence this action. He is not a shareholder who has more than 50% shares in the plaintiff. In consequence, he ought to have obtained the approval of the board of directors. In this case, there is no resolution of the board of directors or resolution of the general meeting of the plaintiff company to commence the proceedings. It will be different if the majority of the shareholders would have approved the proceedings if it has been initiated. There are number of authorities to my proposition and some of them are as follows:

(a) *Halsbury's Laws of England* (4th Ed, 1996 Reissue) Vol (7(2), states at para 1170:

> Control of company's litigation. As regards litigation by an incorporated company, as rule the directors are the persons who have authority to act for the company, but in the absence of any contract to the contrary in the articles of association, the majority of the members are entitled to decide, even to the extent of overruling the directors, whether action in the company's name should be begun or allowed to proceed. The secretary of company cannot institute proceedings in its name in the absence of express authority to do so; but proceedings begun without authority may subsequently be ratified.

(b) *Sarawak Building Supplies Sdn Bhd v Director of Forests & Ors* [1991] 1 MLJ 211. Although it was overturned on appeal on a technical point relating to affidavit, the judgment of Haidar J (as he then was) on the authority to sue, remains good law and has been applied in cases such as *Malaysia Land Investment Co v Sathask Realty Sdn Bhd* [2001] 1 MLJ 451.

(c) In *Malaysia Land Investment Co (Pte) Ltd v Sathask Realty Sdn Bhd & Ors* [2001] 1 MLJ 451, Clement Skinner J opined:

> Where a challenge to authority in commencing proceedings has been made, the burden of proving that the suit has been instituted with the authority of the company rests on the plaintiff (see p 461D). The plaintiff failed to adduce evidence to show how and when the authorisation was given by the board of directors of the plaintiff and how and when that full approval by the plaintiff was given. Hence, those were merely bare assertions by the plaintiff and the plaintiff had failed to discharge the burden of proving that Mr Wong had the authority to commence the suit.

(ii) In this case, the plaintiffs submit that PW1 has the actual and ostensible authority. I find on the facts of this case and after hearing the evidence that this statement is mischievous as it was clear from the evidence, that PW1 did not obtain consent from the other shareholder and even if he had attempted to obtain the consent he would not have obtained them because of the special working arrangement between all persons involved in the joint venture agreement including PW1. It was also the evidence of PW1 that he was forced to resign as the managing director of the defendants in the year 2003. After hearing the evidence on the whole and failure of PW1 to disclose the truth, I take the view that PW1 has initiated this action to demonstrate his frustration. The plaintiffs' submission of agent of necessity has no basis. In this case, the submission of the defendants' counsel has merits and that part of the submission is reproduced:

> Ting Chek Sii seeks to rely on the principle of agent of necessity in the case of *Avel Consultants Sdn Bhd & Anor v Mohd Zain Yusof & Ors* [1985] 2 MLJ 209. However, it is submitted that the principle of agent of necessity does not apply in the present case and *Avel Consultants* is distinguishable for the reasons below. No emergency or urgency giving rise to agency of necessity — Regarding agency of necessity, it is stated in *Janab's Guide to Law and Practice and Legal Remedies*, Vol II, at p 247:
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> > An agent by necessity is one recognised by law in certain cases. For example, where a person is faced with an emergency in which the property or interest of another are in imminent danger and it becomes necessary in order to preserve the property or interests, act before the instructions of the owner can be obtained. In such cases, the law assumes consent of the owner to the creation of the relationship of principle and agent.
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> Even in *Avel Consultants*, VC George J (as he then was) said:
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> > It seems to me that the doctrine of Agency of Necessity is not without application in this case. In *Halsbury's Laws of England* (3rd Ed) Vol 1 p 157 para 373 deals with the application of the doctrine, portions of which read as follows:
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> > > Agency of necessity arises wherever a duty is imposed upon a person to act on behalf of another apart from contract, and in circumstances of emergency, in order to prevent irreparable injury. It may also arise where a person carries out the legal or moral duties of in the absence or default of that other, or acts in his interest to preserve his property from destruction.
> > >
> > > The conditions which entitle an agent to exceed his authority under the doctrine of necessity are (1) that he could not communicate his principal (2) that the course he took was

> necessary in the sense that it was in the circumstances the only reasonable and prudent course to take and (3) that he acted bona fide in the interest of the parties concerned. At the same time, though a strong case is required, it is not essential that any other course shall be impossibility.

No support of the majority — Even based on a doctrine of necessity, there is still a requirement of being able to show the support of the majority. It may be noted that, in *Avel*'s case, the managing director, and another shareholder, held majority shares in the company. The learned judge, VC George J, said that there was no necessity to hold a general meeting as obviously a resolution to authorise the action would be passed by the general meeting.

> And since the outcome of any motion at such a meeting to cause the writ to issue was obvious and foregone conclusion in that Johari and Abdul Halim owned or controlled more than 50% of the shares, having such a meeting was not necessary.

Further, the case of *Marshall's Valve Gear Co Ltd v Manning, Wardle & Co* [1909] 1 Ch 267 referred to by VC George J, clearly shows the application of the majority rule principle. His Lordship said:

> In *Marshall's Valve Gear Co Ltd v Manning, Wardle & Co Ltd* [1909] Ch 267 in a situation not unlike the situation obtaining in the instant Neville J refused a motion to direct the removal of the writ which had been caused to issue without a Board or general meeting decision. In that case the managing director who had caused the writ to issue controlled the majority of the shares of the company. At the top of p 272 Neville J said: Mr Marshall has commenced an action in the name of the company for the purpose of restraining an alleged infringement on part of the owners of the new patent, and the other directors come to the court and ask to have the writ in that action taken off file on the ground that the action was commenced without the authority of the company. It is admitted that the calling of a of shareholders to ascertain the wishes of the company would be useless because the position of the voting power is perfectly well understood. It is divided between the persons concerned, and undoubtedly the managing director, who has commenced this action, would have the majority of votes at a general meeting, and, therefore, if it is right that effect should be given to the wishes of the majority of the company in the present case, it is admitted that no object is to be gained by calling a meeting, because the result of that meeting is a foregone conclusion. Under those circumstances ought the court to direct the removal of the writ?

The judge answered that question at the bottom of p 273:

> … it is obvious, I think, that I ought not to interfere with the progress of the present action, because it is brought with the approval of the majority of the shareholders in the company, and, upon the decisions which I have referred to, they are the persons are entitled to say, aye or no, whether the litigation shall proceed.

In the present case, there is no evidence of any emergency or any urgency that would have necessitated the commencement of the action without the proper authorisation from the board or the general meeting. It may be noted that for 13 years (after the joint venture agreement) there was no claim or allegation of 'rentals' being due. Furthermore, Ting Check Sii does not hold majority shares in the plaintiff company. He cannot claim command or support of the majority votes or to be agent of those votes. The other director and shareholder (holding 50%), DW1, was not consulted. DW1 has expressly disagreed with the institution of the present action. There was no board meeting or general meeting to authorise the present action. Moreover, since the present action was commenced almost two years ago, there has been no attempt at all to obtain ratification. Accordingly based on *Malaysia Land Investment Co v Sathask Realty Sdn Bhd* and the case of Mitchell & Hobbs the present action should be struck out.

(iii) In this case, I have heard the evidence of the two Japanese directors. I have no hesitation to hold that they are witnesses of truth and they had not minced the evidence and the truth as attempted by PW1. In consequence, I accept the defendants' version and rule that the defendants' defence must succeed and there is nothing prohibiting in law for the plaintiffs to permit the defendants to operate its business in the said premise without payment of rental as per the terms agreed.

[11] For reasons stated above, I dismiss the plaintiffs' claim. Further, as this action was not properly commenced and the conduct of PW1 has caused much embarrassment and hardship to the defendants, it is only proper that I should order PW1 to personally bear the costs of this action and indemnify the two Japanese directors of the defendant for all expenses, inclusive of travelling expenses incurred to come to Malaysia, to give evidence for this case on a full indemnity basis. In consequence, I make the following orders:

(i) The plaintiffs' action be dismissed.

(ii) PW1 to personally pay the costs of this action and also pay costs to the defendant. The getting up fees shall not exceed RM100,000. If costs to the defendant cannot be agreed, the defendants are at liberty to tax the costs.

(iii) PW1 to personally indemnify the two Japanese directors for all expenses incurred, for being present in Malaysia to give evidence. The deputy registrar shall take note of this order if the matter is referred to taxation and award the expenses incurred on a full indemnity basis.

I hereby order so.

Plaintiff's action dismissed with costs.

Reported by Andrew Christopher Simon